

**DEFENDANT TONKAWA TRIBAL  
GAMING COMMISSION**

**EXHIBIT A**

FILED

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CLERK, U.S. DIST. COURT  
EASTERN DIST. OF CALIF  
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DEPUTY

IN THE UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF CALIFORNIA

CASCADE ENTERTAINMENT GROUP, )  
LLC, et al. )

No. CV-F-04-5135 REC/LJO

ORDER DENYING PLAINTIFFS'  
APPLICATION FOR TEMPORARY  
RESTRAINING ORDER

Plaintiff, )

vs. )

PICAYUNE RANCHERIA OF THE )  
CHUKCHANSI INDIANS, et al., )

Defendant. )

On January 26, 2004, the court heard the Application for  
Temporary Restraining Order filed by plaintiffs Cascade  
Entertainment Group, LLC and Karen Sock.

Upon due consideration of the record before the court and  
the written and oral arguments of the parties, the court denies  
plaintiffs' application.

On January 21, 2004, Cascade Entertainment Group, LLC, and  
Karen Sock filed a Complaint for Breach of Contract; Breach of  
Implied Covenant of Good Faith and Fair Dealing; Violation of

1 Tribal Gaming Ordinance; and Promissory Estoppel. Named as  
2 defendants are the Picayune Rancheria of the Chukchansi Indians,  
3 Chukchansi Economic Development Authority, Tribal Gaming  
4 Commission of the Picayune Rancheria of the Chukchansi Indians,  
5 Silas L. Summers, Jr., Patrick Hammond III, Thomas M. Walker, and  
6 Does 1-70. The Complaint prays for injunctive relief only,  
7 seeking an injunction enjoining defendants from:

8 (1) prohibiting Sock from performing her  
9 duties as Assistant General Manager/Vice  
10 President of the Casino; (2) prohibiting Sock  
11 from entering the Casino; (3) maintaining  
12 custody of Sock's temporary gaming license;  
13 (4) not honoring Sock's temporary gaming  
14 license through its period; and (5) denying  
15 Sock's two-year gaming license until this  
16 matter can be arbitrated.

17 Cascade is a development and management company that  
18 developed and constructed the Chukchansi Gold Resort and Casino  
19 (Casino). On July 16, 2002, Cascade, the Picayune Rancheria of  
20 Chukchansi Indians (Tribe), and the Chukchansi Economic  
21 Development Authority (CEDA) entered into a Second Amended and  
22 Restated Management Agreement (Management Agreement). Pursuant  
23 to the Management Agreement, Cascade manages and operates the  
24 Casino. Cascade asserts that it hired Karen Sock to be Assistant  
25 General Manager/Vice President of the Casino on May 9, 2003. The  
26 Tribe asserts that Ms. Sock was not hired as an employee of  
Cascade but, rather, as employee of CEDA. Ms. Sock was granted a  
temporary gaming license by the Tribal Gaming Commission of the  
Picayune Rancheria of the Chukchansi Indians (TGC) on May 15,  
2003. Pursuant to the terms of the Tribal Gaming Ordinance, Ms.

1 Sock's temporary gaming license was effective for 90 days. Ms.  
2 Sock submitted a permanent gaming license application to the TGC  
3 and started working as the Assistant General Manager. According  
4 to the Declaration of Silas L. Summers, Jr., Chairman of the  
5 Tribal Gaming Commission, on June 19, 2003, Virginia Perkins, the  
6 General Manager of the Casino, delivered to the TGC copies of the  
7 Casino's operating and procedures manuals. Included in the  
8 Cashier Department Procedure Manual is a "Check Cashing  
9 Procedure" which provides in pertinent part that: "There are two  
10 types of checks that are available for our guests convenience.  
11 They are checks cashed through a check cashing service, and  
12 casino check cashing accounts." The "Check Cashing Procedure"  
13 also states: "Company checks will not be accepted". Mr. Summers  
14 avers that "[o]n June 25, 2003, the Tribal Gaming Commission  
15 found the policy and procedure manuals provided by Ms. Perkins on  
16 June 19, 2003, to be adequate under Section 3.6 of the Management  
17 Agreement and Section 8.0 of the Compact by issuing a facility  
18 license to the Casino." On August 14, 2003, the Tribal Gaming  
19 Commission issued to Ms. Sock a second temporary gaming license.  
20 On August 29, 2003, Ms. Sock gave approval to cash \$23,000 worth  
21 of checks from the business accounts of Mark Bosio. A few days  
22 later, Mr. Bosio engaged in inappropriate, non-consensual sexual  
23 conduct with a Casino host. After reviewing the tape, Ms. Sock  
24 and other employees banned Mr. Bosio from the Casino for 30 days.  
25 After he was banned, the checks drawn on Mr. Bosio's business  
26 accounts bounced. Eventually, Mr. Bosio was permanently banned

1 from the Casino. According to Mr. Summers' declaration, Ms. Sock  
2 did not report the incident to the Tribal Gaming Commission until  
3 October 21, 2003. TGC Investigator Rex Sawell was assigned to  
4 conduct a preliminary investigation. Mr. Sawell submitted a  
5 report to the TGC wherein he concluded that Ms. Sock had  
6 committed several violations of the Casino's policies and  
7 procedures. Mr. Summers avers that "[v]iolations of the Casino's  
8 check cashing policies are a serious offense because a common  
9 form of fraud and theft in the casino industry occurs due to  
10 collaboration and collusion between patrons and casino  
11 employees." On October 25, 2003, Ms. Sock sent an e-mail to the  
12 TGC summarizing the incident and her attempts to collect on the  
13 checks. On November 6, 2003, the TGC issued a third temporary  
14 gaming license to Ms. Sock. On November 18, 2003, Russ Pratt,  
15 President of Cascade, wrote to the TGC in pertinent part as  
16 follows:

17 Your letter notes, correctly, that the checks  
18 were accepted in a manner that was not  
19 consistent with the check cashing policies  
20 that have been adopted to date by Chukchansi  
21 Gold. Specifically, the checks were accepted  
22 without Mr. Bosio having been required to  
23 open a casino check cashing account, were  
24 drawn on a company account (albeit a company  
25 that Mr. Bosio owns), and were signed by a  
26 person other than Mr. Bosio.

27 Section 30.03 of the Casino's Policy Manual  
28 provides that the Casino's Credit Committee  
29 is responsible for approving any changes or  
30 exceptions to the check cashing policy, and  
31 for setting check cashing limits and  
32 individual approval levels. Although Karen  
33 Sock ... is a member of that Committee, the  
34 specific procedures that would have given Ms.

1 Sock guidance in her executive decision had  
2 not yet been drafted and implemented, and the  
3 Committee was not asked to approve the  
4 cashing of Mr. Bosio's checks. Ms. Sock did  
5 consult with members of the Committee after  
6 the return of the checks and continues to do  
7 so as part of the collection process.

8 ...

9 In the gaming industry, it is common practice  
10 for regular casino clients who wager large  
11 sums to be given check cashing privileges  
12 that are not normally accorded to other  
13 casino clients, and it was with this in mind  
14 that Ms. Sock made the executive decisions  
15 that she did. Karen Sock holds the position  
16 of authority in the Casino management that  
17 would normally give approval of such check  
18 cashing. But, the fact remains that the  
19 Casino's existing written policies that were  
20 designed for the cashier cage were not  
21 followed, and I requested the Casino  
22 management to provide me with follow up on  
23 the collection efforts and a letter of  
24 reprimand in regards to Ms. Sock.

25 I attach a copy of the letter to Ms. Sock  
26 that she will be presented with in a  
counseling session on this matter, together  
with a letter I have sent to the General  
Manager of the Casino also on this matter.  
In addition, I have instructed the Casino's  
General Manager to convene a meeting of the  
Credit Committee to discuss in detail, and  
propose in writing for the consideration of  
the CEDA Board and Cascade, an express set of  
policies under which the Credit Committee  
will exercise its authority under section  
30.03 of the Policy Manual.

27 In addition, on November 19, 2003, Ms. Perkins sent a letter to  
28 Ms. Sock:

29 [T]he tools allowing you to deviate from the  
30 established cage cashier check cashing  
31 procedures were not in place. Therefore,  
32 your actions did not follow proper procedures  
33 and are deemed unauthorized. In addition,  
34 and upon further review, it was realized that

1 an authorized signatory of his business  
2 account signed the check, and Mr. Bosio did  
3 not sign them himself. This also does not  
4 follow proper procedure.

5 It is a vitally important responsibility that  
6 all ... management personnel to be familiar  
7 with policies and procedures and to ensure  
8 that they are followed as established. It is  
9 anticipated that you will continue to make  
10 executive decisions that are based on sound  
11 business practices and industry knowledge  
12 while staying within the boundaries of our  
13 policies and procedures. To that end and  
14 assist you in managing future policy matters,  
15 you will participate in a training session  
16 for all property management on the proper  
17 review and implementation of policy &  
18 procedure.

19 Mr. Pratt also wrote to Ms. Perkins, acknowledging that Ms.  
20 Sock's approval of Mr. Bosio's checks were "inconsistent with the  
21 Casino's present check cashing policy as it relates to the cage"  
22 and that Ms. Sock "should have been aware that existing policy  
23 was not being observed" and further stating:

24 While the intent of our overall policy is to  
25 have the Credit Committee develop further  
26 procedures to provide authority to upper  
level management consistent with industry  
practice, that has not yet occurred.

On January 8, 2004, Ms. Shock was called into a meeting with the  
General Manager and officials from the TGC. Ms. Shock was handed  
the following letter:

The Gaming Commission has completed your  
suitability determination for a gaming  
license and has hereby denied your  
application.

In addition, Ms. Sock was handed the following letter from the  
Tribal Gaming Commission dated January 8, 2004:

1 This is to inform you that the Tribal Gaming  
2 Commission has completed its review of your  
3 application for a gaming license and has  
4 determined your application shall be denied.

5 Pursuant to Section 5.9 (License Denial) of  
6 the Tribal Gaming Ordinance ... Any  
7 application for a License shall be denied if  
8 the Tribal Commission, after an adequate  
9 review, determines the Application is  
10 incomplete or deficient, or that the  
11 employment of the Applicant poses a threat to  
12 the public interest or the effective  
13 regulation of gaming, or creates or enhances  
14 the danger of unsuitable, unfair or illegal  
15 practices and methods and activities in the  
16 conduct of gaming. If the foregoing  
17 determinations about the Applicant are made,  
18 no management contractor or Tribal gaming  
19 operation shall employ the Applicant.

20 Your application has been denied for the  
21 following reasons:

22 Specifically, on August 29, 2003, your  
23 authorized four checks totaling \$23,000.00 to  
24 be cashed in violation of the Chukchansi Gold  
25 Resort & Casino Check Cashing Procedures in  
26 that you:

- 1) Accepted company checks;
- 2) Made approval of checks without requiring casino guests to establish a check cashing account;
- 3) Failed to process the checks through TeleChek to verify funds;
- 4) Accepted third party checks; and
- 5) Failed to verify the signature and identity of the check writer with I.D. of person presenting the checks.

Furthermore, your actions resulted in damages to the casino in the amount of \$23,000.00 as the four checks were returned for insufficient funds and have yet to be recovered.



1 Your violations of the Chukchansi Gold Resort  
2 & Casino Check Cashing Procedures indicate  
3 that you are unsuitable for the key gaming  
4 license position for which you were hired,  
5 and such conduct on your part indicates to  
the Tribal Gaming Commission that approving  
your tribal gaming license would not be in  
the best interests of the Picayune Rancheria  
of the Chukchansi Indians.

6 Ms. Sock's temporary gaming license was then confiscated  
7 (although the Tribe asserts that she "immediately and voluntarily  
8 relinquished possession of her temporary tribal gaming license")  
9 and she was escorted off the Casino property by security guards.  
10 She has filed a petition for arbitration. On January 20, 2004,  
11 counsel for plaintiffs was advised by the Tribal Gaming  
12 Commission that he should apply to the Tribal Gaming Commission  
13 for reconsideration of Ms. Sock's suitability to the extent that  
14 grounds for reconsideration exist.

15 Plaintiffs contend that Ms. Sock was entitled to written  
16 notice and an opportunity to be heard pursuant to the terms of  
17 the Tribal Gaming Ordinance before revoking Ms. Sock's temporary  
18 gaming license and that the basis for the revocation of the  
19 temporary gaming license was based on regulations which had not  
20 been adopted when she approved the cashing of Mr. Bosio's  
21 business checks. Cascade further argues that these actions  
22 constituted a breach of the Agreement and have resulted in  
23 detriment to Cascade's operation of the Casino because of an  
24 inability to recruit qualified personnel and maintain morale.

25 A. Subject Matter Jurisdiction.

26 Plaintiffs contend that this court has subject matter

1 jurisdiction.

2 In so asserting, plaintiffs refer the court to Morongo Band  
3 of Mission Indians v. Rose, 893 F.2d 1074, 1077 (9<sup>th</sup> Cir. 1990)  
4 for the proposition that a federal question inheres to a  
5 complaint regarding enforcement of a tribal ordinance against  
6 non-Indians.

7 However, Morongo does not discuss federal question  
8 jurisdiction in a case brought by non-Indians against the Tribe  
9 based on a tribal ordinance. Involved in Morongo was an action  
10 by the tribe to enforce its ordinance against a non-Indian.

11 However, plaintiffs also refer the court to Tamiami Partners  
12 v. Miccosukee Tribe of Indians, 177 F.3d 1212 (11<sup>th</sup> Cir. 1999).

13 In Tamiami Partners, a bingo facility operator brought an action  
14 against an Indian tribe and tribal officers seeking an injunction  
15 to prevent the tribe from taking control of the facility. In  
16 addressing the tribe's contention that subject matter  
17 jurisdiction was lacking, the Eleventh Circuit held in pertinent  
18 part:

19 According to the defendants, these counts  
20 merely address contract and arbitration  
21 disputes arising under the Agreement. They  
22 argue that such disputes do not raise a  
23 federal question and that the statement in  
24 Article 23 of the Agreement that the district  
25 court 'shall have jurisdiction' over the  
26 parties cannot change this result.

27 The defendants are correct in part. It is  
28 well-settled that parties cannot create  
29 subject matter jurisdiction by agreement ...  
30 In addition, the mere fact that a dispute  
31 concerns a contract or an agreement to  
32 arbitrate, without more, does not raise a

1 federal question ... In this case, however,  
2 we find that the first three counts of  
3 Tamiami's complaint present more than a mere  
4 dispute concerning a contract or an agreement  
5 to arbitrate. Each of these counts - at  
6 least in part - concerns the arbitration of  
7 Tamiami's claims that the Tribe had an  
8 obligation under the Agreement to process the  
9 gaming license applications of Tamiami and  
10 its employees in good faith, and that the  
11 Tribe breached its obligation when it  
12 rejected these license applications for the  
13 sole purpose of taking over MIB. These very  
14 same claims were before this court in Tamiami  
15 II, albeit in the context of a breach of  
contract suit against the Tribe. The Tamiami  
II panel concluded that these claims arose  
under federal law because the Agreement  
incorporated - by operation of law and by  
reference - the provisions of IGRA and its  
associated regulations ... Because federal  
law is equally implicated when these claims  
are presented in the arbitration context, we  
must follow the Tamiami II panel's conclusion  
here. We hold, therefore, that the first  
three counts of Tamiami's complaint state a  
federal question insofar as they relate to  
the Tribe's rejection of gaming license  
applications.

16 177 F.3d at 1222-1223.

17 Tamiami Partners appears to support a finding of federal  
18 question jurisdiction here because of plaintiffs' claim that the  
19 Tribe failed to comply with procedures set forth in the gaming  
20 ordinance before revoking Ms. Sock's temporary gaming license and  
21 because of the claim that the revocation of the temporary gaming  
22 license was based on grounds not set forth in the ordinance and  
23 not enacted by the tribe until after the incident with Mr. Bosio.

24 B. Sovereign Immunity.

25 Plaintiffs assert that neither the Tribal entities or its  
26 officers can invoke sovereign immunity.

1 With respect to the Tribe, plaintiffs contend that the Tribe  
2 has waived sovereign immunity by Section 16.1 of the Agreement  
3 between Cascade and the Tribe, which provides in pertinent part:

4 The parties agree that binding arbitration  
5 shall be the remedy for all disputes,  
6 controversies and claims between the Tribe  
7 and the Manager or between the [Chukchansi  
8 Economic Development] Authority and the  
9 Manager arising out of this Agreement, any  
10 documents referenced by any of this  
11 Agreement, any agreements collateral thereto,  
12 or any notice of termination thereof,  
13 including without limitation, any dispute,  
14 controversy or claim arising out of any of  
15 these agreements. The Tribe and the  
16 Authority waive any recourse to any court of  
17 the Tribe, and agree that Tribal court  
18 procedures need not be exhausted as a  
19 precondition to commencing or maintaining  
20 dispute resolution procedures under the  
21 Agreement. The parties intend that such  
22 arbitration shall provide final and binding  
23 resolution of any dispute, controversy or  
24 claim, and that action in any other forum  
25 shall be brought only if necessary to compel  
26 such arbitration, to aid such arbitration, or  
to enforce an award or order resulting from  
such arbitration ... Notwithstanding the  
foregoing, an arbitrator shall not have the  
power to compel, negate, assume, usurp or in  
any manner affect any Governmental Action  
unless any Governmental Action or failure to  
take any Governmental Action constitutes a  
breach of this Agreement by the Tribe or the  
Authority.

...

(iii) Court Authority. If necessary, orders  
to compel arbitration, aid arbitration, or  
enforce an award of an arbitrator or provide  
any necessary remedies in aid of an  
arbitration may sought [sic] before the  
courts of the State of California and the  
Federal Courts.

Citing C & L Enterprises, Inc. v. Citizen Band Potawatomi

1 Indian Tribe of Oklahoma, 532 U.S. 411 (2001) for the conclusion  
2 that a contract's arbitration provision constitutes clear waiver  
3 of tribal sovereign immunity with regard to "disputes ...  
4 relating to the contract", plaintiffs argue that the Tribe here  
5 expressly agreed to arbitrate disputes relating to the Agreement.

6 To the extent that Cascade has made claims in this action,  
7 defendants respond that those claims are barred by sovereign  
8 immunity.<sup>1</sup> In so arguing, defendants refer to the exception to  
9 arbitration for "Governmental Action" set forth in Section 16.1.  
10 "Governmental Action" is defined in Section 1 of the Agreement as  
11 "any resolution, ordinance, statute, regulation, order, or  
12 decision regardless of how constituted having the force of law or  
13 legal authorization of the Tribe, the Authority or any  
14 instrumentality or agency of the Tribe." Defendants note that  
15 Section 5.9 of the Tribal Gaming Ordinance pertains to "License  
16 Denial" and provides:

17 Any Application for a License shall be denied  
18 if the Tribal Commission, after an adequate  
19 review, determines the Application is  
20 incomplete or deficient, or that the  
21 employment of the Applicant poses a threat to  
22 the public interest or the effective  
23 regulation of gaming, or creates or enhances  
24 the danger of unsuitable, unfair or illegal  
25 practices and methods and activities in the  
26 conduct of gaming. If the foregoing  
determinations about the Applicant are made,  
no management contractor or Tribal gaming  
operation shall employ the Applicant.

24 Defendants contend that, if the Tribal Gaming Commission makes

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25 <sup>1</sup>Defendants do not dispute that individual members of a tribe  
26 are not entitled to the defense of sovereign immunity.

1 any of these determinations, the TGC is required to deny the  
2 application. Therefore, defendants argue, there was no  
3 withholding from Ms. Sock of any license that the TGC was  
4 authorized to grant. Defendants further argue:

5 Cascade's suggestion that the exception to  
6 the governmental affairs carve-out in Section  
7 16.1 renders arbitrable its allegation that  
8 the Tribal Gaming Commission's denial of Ms.  
9 Sock's license application constitutes a  
10 breach of Section 2.5 of the Management  
11 Agreement is no more colorable a claim.  
12 Cascade asserts that the Tribal Gaming  
13 Commission's denial constituted an exercise  
14 of police powers that impaired the Tribe's  
15 obligations pursuant to Sections 3.1 and  
16 3.6.1 of the Management Agreement to allow  
17 Cascade 'to conduct and direct all business  
18 and affairs in connection with day-to-day  
19 operation, management and maintenance of the  
20 Enterprise and the Facility and to exercise  
21 exclusive responsibility and authority to  
22 direct the selection, control and discharge  
of all employees performing regular services  
for the Enterprise.' ... But Cascade's  
authority and control is subject to the  
limitation in Section 3.1 that '[t]he  
Authority shall have the sole proprietary  
interest in and ultimate responsibility for  
the conduct of all Gaming conducted by the  
Enterprise, subject to the rights and  
responsibilities of [Cascade] under this  
[Management] Agreement.' ... As licensing is  
a function committed to the sole province of  
the tribal government under tribal, state and  
federal law, the caveat in this section  
regarding Cascade's rights and  
responsibilities cannot possibly be read to  
subordinate tribal licensing decisions to  
Cascade's managerial prerogatives.

23 Defendants refer the court to evidence that, when a prior version  
24 of the Management Agreement was forwarded to the National Indian  
25 Gaming Commission (NIGC) for approval, NIGC stated that it could  
26 not be approved because

1 Certain sections of the Contract provide for  
2 arbitration to resolve budget, spending, and  
3 licensing disputes. Budget, spending, and  
4 licensing disputes may not be referred to  
arbitration, as the Tribe must retain its  
sole-proprietary interest in gaming  
operation.

5 Through subsequent negotiations and drafts, the Agreement quoted  
6 above was approved by the NIGC.

7 D. Authority to Issue Injunctive Relief.

8 Referring to Section 16.1, plaintiffs assert that this  
9 provision in the Agreement allows this court to issue the  
10 injunctive relief sought herein.

11 In addition, plaintiffs refer the court to PMS Distributing  
12 Co., Inc. v. Huber & Suhner, A.G., 863 F.2d 639, 642 (9<sup>th</sup> Cir.  
13 1988):

14 The fact that a dispute is arbitrable and  
15 that the court so orders under Section 4 of  
the Arbitration Act, 9 U.S.C. § 4, does not  
16 strip it of authority to grant a writ of  
possession pending the outcome of the  
17 arbitration so long as the criteria for such  
a writ are met. A district court's order to  
18 arbitrate, with or without a retention of  
jurisdiction, has an 'ongoing effect,' and  
19 the parties may return to the district court  
for interpretation or modification of the  
20 order ....

21 Plaintiffs also cite Performance Unlimited v. Questar Publishers,  
22 Inc., 52 F.3d 1373 (6<sup>th</sup> Cir. 1995):

23 [W]e ... hold that in a dispute subject to  
mandatory arbitration under the Federal  
24 Arbitration Act, a district court has subject  
matter jurisdiction under § 3 of the Act to  
25 grant preliminary injunctive relief provided  
the party seeking the relief satisfies the  
26 four criteria which are prerequisites to the  
grant of such relief. We further conclude

1           that a grant of preliminary injunctive relief  
2           pending arbitration is particularly  
3           appropriate and furthers the Congressional  
4           purpose behind the Federal Arbitration Act,  
5           where the withholding of injunctive relief  
6           would render the process of arbitration  
7           meaningless or a hollow formality because an  
8           arbitral award, at the time it was rendered,  
9           '"could not return the parties substantially  
10          to the status quo ante.'" ....

11         52 F.3d at 1380.

12           Plaintiffs cannot rely on the provisions of Section 16.1 of  
13           the Agreement to provide authority to this court to grant the  
14           injunctive relief sought unless this court concludes that it has  
15           subject matter jurisdiction independent of those contract  
16           provisions. As noted, subject matter jurisdiction cannot be  
17           conferred by agreement. As discussed above, there is a real  
18           issue whether a licensing dispute is arbitrable. Secondly, the  
19           cases cited by plaintiffs do not appear to have application to  
20           the matter before the court. Plaintiffs' complaint is not  
21           brought pursuant to the Arbitration Act - plaintiffs are not  
22           seeking to compel arbitration.

23           C. Governing Standards.<sup>2</sup>

24           "The purpose of the preliminary injunction is to preserve  
25           the status quo between the parties pending a final determination  
26           of the merits of the action." 7-Pt. 2 Moore's Federal Practice,  
27           ¶ 65.04[1] at 65-30. "'The status quo is that last uncontested  
28           status which preceded the pending controversy.'" Tanner Motor

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29           <sup>2</sup>Although the motion before the court is for a temporary  
30           restraining order, the same standards apply.



1 Livery, Ltd. v. Avis, Inc., 316 F.2d 804, 809 (9th Cir.), cert.  
2 denied, 375 U.S. 821 (1963). The standards governing the  
3 issuance of a preliminary injunction in the Ninth Circuit are  
4 reiterated in Martin v. International Olympic Committee, 740 F.2d  
5 670, 674-675 (9th Cir. 1984):

6 In this circuit, a party seeking preliminary  
7 injunctive relief must meet one of two tests.  
8 Under the first, a court may issue a  
9 preliminary injunction if it finds that:

10 (1) the [moving party] will suffer  
11 irreparable injury if injunctive relief is  
12 not granted, (2) the [moving party] will  
13 probably prevail on the merits, (3) in  
14 balancing the equities, the [non-moving  
15 party] will not be harmed more than [the  
16 moving party] is helped by the injunction,  
17 and (4) granting the injunction is in the  
18 public interest.

19 ... Alternatively, a court may issue a  
20 preliminary injunction if the moving party  
21 demonstrates 'either the possibility of  
22 irreparable injury or that serious questions  
23 are raised and the balance of the hardships  
24 tips sharply in his favor.' ... Under this  
25 last part of the alternative test, even if  
26 the balance of the hardships tips decidedly  
in favor of the moving party, it must be  
shown as an irreducible minimum that there is  
a fair chance of success on the merits.

The Ninth Circuit has concluded, however, that these two tests  
are "not really two entirely separate tests, but that they are  
merely extremes of a single continuum." Benda v. Grand Lodge of  
IAM, 584 F.2d 308, 315 (9th Cir. 1978), cert. dismissed, 441 U.S.  
937 (1979). Because the difference between the two formulations  
is insignificant, the Ninth Circuit accepts either as  
satisfactory. Benda, id. However, at no point in the continuum

1 is the court "bound to decide doubtful or difficult questions of  
2 law or disputed issues of fact." Dymo Industries, Inc. v.  
3 Tapeprinter, Inc., 326 F.2d 141, 143 (9th Cir. 1965). As  
4 explained in Republic of the Philippines v. Marcos, 862 F.2d  
5 1355, 1362 (9<sup>th</sup> Cir. 1988), cert. denied, 490 U.S. 1035 (1989):

6           Serious questions are 'substantial, difficult  
7           and doubtful, as to make them a fair ground  
8           for litigation and thus for more deliberative  
9           investigation.' ... Serious questions need  
10          not promise a certainty of success, nor even  
11          present a probability of success, but they  
12          must involve a 'fair chance of success on the  
13          merits.'

14        "If the public interest is involved, the district court must also  
15        determine whether the public interest favors the [movant]."

16       Westlands Water Dist. v. Natural Resources Defense Council, 43  
17       F.3d 457, 459 (9<sup>th</sup> Cir. 1994). As explained in Stanley v.  
18       University of Southern California, 13 F.3d 1313, 1320 (9<sup>th</sup> Cir.  
19       1994):

20           A prohibitory injunction preserves the status  
21           quo ... A mandatory injunction "'goes well  
22           beyond simply maintaining the status quo  
23           pendente lite [and] is particularly  
24           disfavored.'" ... When a mandatory  
25           preliminary injunction is requested, the  
26           district court should deny such relief  
27           "'unless the facts and law clearly favor the  
28           moving party.'" ....

29        D. Likelihood of Success on the Merits.

30        The court concludes that plaintiffs have not shown a  
31        likelihood of success on the merits of their claim that the  
32        revocation of Ms. Sock's temporary gaming license and the  
33        simultaneous denial of Ms. Sock's application for a permanent


1 gaming license was in violation of the Second Amended and  
2 Restated Management Agreement or the Tribal Gaming Ordinance  
3 because Ms. Sock was deprived of the process set forth in the  
4 Tribal Gaming Ordinance. Ms. Sock's application for a permanent  
5 gaming license was under review. She had only been issued a  
6 series of temporary gaming licenses which, by the terms of the  
7 Ordinance, are only effective for 90 days. Plaintiffs point to  
8 nothing in the Tribal Gaming Ordinance from which it may be  
9 inferred that an applicant holding a temporary gaming license is  
10 entitled to written notice and a hearing before that temporary  
11 license is revoked. Here, the record establishes that Ms. Sock's  
12 temporary gaming license was revoked because her application for  
13 a permanent gaming license was denied. Plaintiffs point to  
14 nothing in the Tribal Gaming Ordinance from which it may be  
15 inferred that an applicant for a permanent gaming license is  
16 entitled to written notice and a hearing before that application  
17 is denied or before the denial of the application becomes  
18 effective. The court also concludes that plaintiffs have not  
19 shown a likelihood of success on the merits that the denial of  
20 Ms. Sock's application for a permanent gaming license was in  
21 violation of the terms of the Tribal Gaming Ordinance or the  
22 Management Agreement. The court notes the evidence that Cascade  
23 admitted that Ms. Sock's actions in connection with the cashing  
24 of Mr. Bosio's company checks was in violation of applicable  
25 procedures at the time. Furthermore, there are serious questions  
26 raised whether a licensing dispute is arbitrable at all.

1 E. Irreparable Injury.

2 The court further concludes that plaintiffs have not  
3 demonstrated irreparable injury if the requested injunction is  
4 not issued. Ms. Sock's allegations that the denial of her  
5 application for the permanent gaming license is speculative and  
6 contradicted by evidence presented by the defendants. Cascade's  
7 contentions that it will be irreparably injured if the temporary  
8 restraining order is not issued is also speculative and inherent  
9 in any employment dispute.

10 ACCORDINGLY, IT IS ORDERED that plaintiffs' Application for  
11 Temporary Restraining Order is denied.

12 Dated: Jan 28, 2003

13   
14 ROBERT E. COYLE  
15 UNITED STATES DISTRICT JUDGE  
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United States District Court  
for the  
Eastern District of California  
January 29, 2004

\* \* CERTIFICATE OF SERVICE \* \*

1:04-cv-05135

Cascade Entertain

v.

Picayune Rancheria

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I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Eastern District of California.

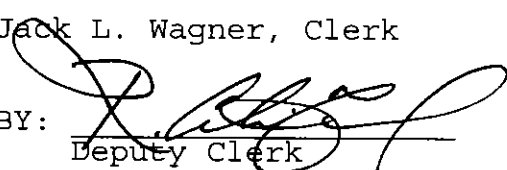
That on January 29, 2004, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office, or, pursuant to prior authorization by counsel, via facsimile.

Eric George  
Browne and Woods  
450 North Roxbury Drive  
Seventh Floor  
Beverly Hills, CA 90210

REC LJO

Jack L. Wagner, Clerk

BY:

  
Deputy Clerk